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No. 506

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

WILLMUT GAS AND OIL COMPANY,
Petitioner,

v.

FEDERAL POWER COMMISSION,
UNITED GAS PIPE LINE COMPANY,
Respondents.

BRIEF OF RESPONDENT, UNITED GAS PIPE LINE COMPANY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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INDEX

	Page
COUNTER-STATEMENT OF FACTS	1
(a) The Proceedings Before the Federal Power Commission	1
(b) The Judgment of the Court of Appeals	4
COUNTER-QUESTION PRESENTED	8
ARGUMENT	8
1. The Basic Act is the Sole Source of Commission Jurisdiction and Power	9
2. The Express Provisions of Section 4(e) Determine the Question Posed Here	13
3. The Commission's Construction of Section 4(e) Accords with United's Construction	20
4. The Decision Below does not Conflict with Amerada	22
5. Willmut's Contentions are Concluded by the Commission's Order of April 29, 1959 at Docket G-18406	24
6. Willmut's Other Cases	25
CONCLUSION	28

AUTHORITIES

Amerada Petroleum Corporation v. Federal Power Commission, No. 6483 (1961 10 Cir.), ... F. 2d	22
Angel v. Bullington (1947) 330 U.S. 183	25
Arrow-Hart & H. Elec. Co. v. Federal Trade Commission (1934) 291 U.S. 587	9
Atcheson, Topeka & Santa Fe Ry. Co. v. United States (1932) 284 U.S. 248	14
Baltimore & O. Ry. Co. v. U. S. (1924) 264 U.S. 258	21
Brownell v. Chase Nat. Bank (1956) 352 U.S. 35	25
Butte A. & P. Ry. Co. v. U. S. (1933) 290 U.S. 127	25
Colorado Interstate Gas. Co. v. Federal Power Commission (1943) 324 U.S. 581	21
Coombe v. United States (1925 D. C. Cir.) 3 F. 2d 714	20
Crowell v. Baker Oil Tools, Inc. (1947, 5 Cir.) 164 F. 2d 487 cert. den. 333 U.S. 880	25
Episcopal Theological Seminary v. Federal Power Commission (1959 D. C. Cir.) 269 F. 2d 228	27

PAGE

Federal Communications Commission v. American Broadcasting Company (1954) 347 U.S. 284 9
Federal Power Commission v. Natural Gas Pipe Line Co. (1942) 315 U.S. 575 ..... 14, 27
Federal Trade Commission v. Mandel Bros. Inc. (1959) 359 U.S. 385 20
Federal Trade Commission v. Sinclair Refining Co. (1923) 261 U.S. 463 9
Hagens v. United Fruit Co. (1943, 2 Cir.) 135 F. 2d 842 25
Hecht Co. v. McLaughlin (1954) 214 F. 2d 212 20
Home Telephone & Telegraph Co. v. Los Angeles (1908) 211 U.S. 265 21
Hope Natural Gas Co. v. Federal Power Commission (1943, 4 Cir.) 134 F. 2d 287 ..... 12, 21, 26
Hope Natural Gas Co. v. Federal Power Commission (1952, 4 Cir.) 196 F. 2d 803 26
Michigan-Wisconsin Pipe Line Co. v. Federal Power Commission (1959, 6 Cir.) 263 F. 2d 553 21
Mississippi Power & Light Co. v. Memphis Natural Gas Co. (1947, 5 Cir.) 162 F. 2d 388, cert. den. 332 U.S. 770 21
Mississippi River Fuel Corp. v. Federal Power Commission (1953, 3 Cir.) 202 F. 2d 849 ..... 9, 10
Montana-Dakota Utilities Co. v. Federal Power Commission (1948, 8 Cir.) 169 F. 2d 392, cert. den. 335 U.S. 853 9
Montana-Dakota Utilities Co. v. Northwestern Public Service Co. (1951) 341 U.S. 246 ..... 11, 27
Morgan v. United States (1936) 298 U.S. 468 14
Ohio Bell Telephone Co. v. Public Utilities Commission (1937) 301 U.S. 292 14
Panhandle Eastern Pipe Line Co. v. Federal Power Commission (1956, 3 Cir.) 232 F. 2d 467 20
Panhandle Eastern Pipe Line Co. v. Federal Power Commission (1956, 3 Cir.) 236 F. 2d 606 ..... 25, 26
Pennsylvania Water & Power Co. v. Consolidated G.E.L. & P. Co. (1950, 4 Cir.) 184 F. 2d 552, cert. den. 340 U.S. 906 11
Pillsbury v. Alaska Packers Assn. (1936, 9 Cir.) 85 F. 2d 758 25
Prentis v. Atlantic Coast Line Co. (1908) 211 U.S. 210 21
Stark v. Wickard (1944) 321 U.S. 288 9
State Corp. Commission of Kansas v. Federal Power Commission (1953, 8 Cir.) 205 F. 2d 690 25

PAGE

Sunray Mid-Continent Oil Co. v. Federal Power Commission (1960) 364 U.S. 137 20
Sunshine Anthracite Coal Co. v. Adkins (1940) 310 U.S. 381 25

Texas & Pacific Railway Co. v. Abilene Cotton Oil Co. (1907) 204 U.S. 426 12

United Gas Pipe Line Co. v. Memphis Light, Gas & Water Division (1959) 358 U.S. 103 ..... 1, 11
United Gas Pipe Line Co. v. Mobil Gas Service Corp. (1956) 350 U.S. 332 11
United States v. Illinois Central Railroad Company (1924) 263 U.S. 515 12
United States v. I. C. C. (1925) 56 App. D.C. 44, 8 F. 2d 905 25
United States v. Munsingwear (1950) 340 U.S. 36..... 25
United States v. New York Terminal Warehouse Co. (5 Cir. 1956) 233 F. 2d 238..... 25

Waite v. Macy (1918) 246 U.S. 606 9

Wheat v. Texas Land & Mtg Co. (5 Cir. 1945) 153 F. 2d 926 cert. den. 328 U.S. 837 25
Willmut Gas and Oil Co. v. Federal Power Commission, et al. (1957) 251 F. 2d 381 3
Willmut Gas & Oil Co. v. Federal Power Commission (1959) 102 App. D.C. 140, 275 F. 2d 877 26
Willmut Gas & Oil Co. v. Federal Power Commission (D.C. Cir No. 16245) (Not yet decided) 3
Woods v. Cannaday (1946) 81 App. D.C. 281, 158 F. 2d 184 25

OPINIONS

FPC Opinion 277, 13 FPC 398 2

STATUTES

Natural Gas Act., 15 U.S.C., Section 717, et seq. 1
Section 4 ..... 7, 26
Section 4(a) 13
Section 4(d) 2, 7, 8, 16
Section 4(e) 2, 7, 8, 13, 15, 20
Section 5 12
Section 5(a) 2, 13
Section 16 24
Section 19(a) 4
Section 19(b) 4, 24

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BRIEF OF RESPONDENT, UNITED GAS PIPE LINE COMPANY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

COUNTER-STATEMENT OF FACTS

(a) The Proceedings before the Federal Power Commission.

United,[1] a natural gas company, sells and delivers natural gas to Willmut under forms of Service Agreements on file with and approved by the Commission, identical with the *Memphis* type (*United Gas Pipe Line Company* v. *Memphis Light, Gas and Water Division* (1959) 358 U.S. 103),

[1] In this Brief Petitioner Willmut Gas and Oil Company will be referred to as Willmut; Respondent Federal Power Commission will be referred to as Commission; Respondent United Gas Pipe Line Company will be referred to as United; the Natural Gas Act will be referred to as the Act, Act of June 21, 1938, c. 556, 52 Stat. 821, as amended, 15 USC (717, et seq). All emphasis in this Brief is added unless otherwise noted.

On November 2, 1954, by Opinion 277, 13 FPC 398, the Commission approved settlement of a Section 5(a) proceeding involving all of United's rates. Thereafter costs and expenses, particularly cost of gas purchased by United from producers, have steadily increased. Keen competition for gas supplies has contributed to steady increase in their purchase cost. Stating in the filings of increased rates that such were chiefly due to increased costs of gas supplies and to maintain reasonable balance and accommodation between increased costs and revenues, United, pursuant to Section 4(d) of the Act has filed the following proceedings: (1) Docket G-9547, filed September 30, 1955, effective as of April 1, 1955; (2) Docket G-10592, filed May 15, 1956, effective as of November 16, 1956; (3) Docket G-12801, filed May 29, 1957, effective as of December 1, 1957; (4) Docket G-15360, filed May 29, 1958, effective as of December 1, 1958; (5) Docket G-18406, filed March 30, 1959, effective as of October 1, 1959; (6) Docket RP 60-2, filed February 11, 1960, effective as of August 13, 1960; (7) Docket RP 61-18, filed December 15, 1960, effective as of June 15, 1961.

With respect to each of the foregoing dockets: The Commission suspended pursuant to its discretionary powers under Section 4(e) for the maximum period of five months, except as to those rates for resale for industrial use only, which it is prohibited from susupending by Section 4(e). In each docket the rates for resale for industrial use only became effective at the expiration of the 30-day notice period provided by Section 4(d); the suspended rates in each docket became effective at the termination of the five months suspension period of Section 4(e) upon written motion by United. In each docket the Commission required a refund undertaking, pursuant to Section 4(e), as to the suspended rates thus made effective by United's motion. Beginning with the second filing (G-10592) each filing for

increased rates pursuant to Section 4(d) *was made after the termination of the suspension period and after the suspended rates had become effective by the motion of Section 4 (e)*. Each succeeding docket was filed upon the same principles and in the same manner and form as Docket G-9547, United hoping that Commission decision would determine controlling principles dispositive of all dockets, so as to stabilize and remove controversy in United's regulatory relationship with the Commission and its customers, and thus free it to plan intelligently and efficiently for the future to accommodate and serve the increasing requirements of its customers.

Docket G-9547 hearings were concluded October 31, 1956; those in Docket G-10592, on April 9, 1957. The Docket G-9547 record was introduced into Docket G-10592, accomplishing de facto consolidation.

Briefing and decision were delayed by *Memphis* (FN 4, opinion below, Pet. App. A, p. 3a)[2]

The final brief was filed January 14, 1959. On August 6, 1959, the Commission directed the Presiding Examiner to decide, apart from figures, the controlling principles in issue in the first two dockets. The Presiding Examiner issued his opinion on April 5, 1960. United and others filed exceptions upon which the Commission heard oral argument on July 12, 1960. The Commission issued its order and decision on January 4, 1961, reversing certain portions, affirming other portions, of the Presiding Examiner's decision. The Commission indicated its decision pointed to disposi-

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[2] Willmut secured from the District of Columbia Court of Appeals an opinion identical with its *Memphis* opinion, *Willmut Gas and Oil Company* v. *Federal Power Commission, et al* (1957 251 F2d 381, later set aside and conformed to this Court's decision in *Memphis*, 275 F. 2d 877.

This cause is Willmut's second suit challenging basic power of the Commission to permit and receive filing of the same two dockets involved in its *Memphis* type litigation. It has already filed a third challenge to the Commission decision of January 4, 1961 on the merits of the first two dockets, sub nom *Willmut Gas and Oil Company* v. *Federal Power Commission et al*, No. 16245, in the Court of Appeals for the District of Columbia Circuit, which was orally argued October 16, 1961, not yet decided.

tion of all dockets, but Willmut and other parties objected and the remaining dockets are now set for hearing November 28, 1961.

Meanwhile, on April 20, 1959, some 20 days after United's filing, Willmut filed at Docket G-18406 a petition to reject that filing, listing in the caption all prior filings beginning with Docket G-9547 (R. 3706), upon grounds approximately identical with those involved in this cause. United answered (R. 3728). The Commission, on April 20, 1959, issued an order, as here, suspending the filing at docket G-18406, subject to Section 4(e) hearing (R. 3725), which denied Willmut's petition.

Willmut attempted to file a petition for rehearing (R. 3877) after expiration of the time permitted by Section 19(a); the Commission rejected (R. 3913), no appeal under Section 19(b) was attempted. The Commission's rejection became final.

When Docket RP 60-2 was filed, Willmut filed a new petition to reject, practically identical with that at Docket G-18406, and again captioned all docket numbers beginning with Docket G-9547 through Docket G-18406, and including Docket RP 60-2 (R. 4601).[3] United answered (R. 4615). The Commission, on March 10, 1960, (R. 4648) rejected, tracking the path followed in Docket G-18406. Willmut petitioned for rehearing (R. 4881); the Commission on May 5, 1960, denied (R. 4966).

(b) The Judgment of the Court of Appeals.

Willmut sought review pursuant to Section 19(b) of the Act to set aside the Commission's order. The Commission appeared in defense of its order, and United intervened in defense of the order.

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[3] Docket RP 61-18 was not then filed, and so is not involved in Willmut's instant motion.

The Court of Appeals affirmed the Commission's order (App. A, Pet. p. 1a, et seq).

It ruled that Willmut's first contention that the Commission had no authority to permit United to file or make effective increased rates superseding previously filed and effective increased rates still being investigated was not well taken.

It reasoned that United's rate-making and rate-changing power was not affected by the Act; that United could change at will the rates offered to customers since it had established them ex parte and not by contract. It declared that Section 4(d) gave the Commission no discretion to reject schedules of increased rates filed by the natural gas company; but on the contrary required such to be filed with the Commission when notice of change was given. The Commission's power with respect to a filed increase was to be found in Section 4(e):

> "To initiate a hearing as to the lawfulness of the changed rates, to suspend their effectiveness for a time, and to order refund of that portion of the increase which, after hearing, it determines to be unlawful."

Thus, it held, the Act provided for investigation of changed rates; but did not contemplate Commission power to refuse to file a tendered new schedule of changed rates, or summarily to reject or disallow such new schedules without hearing.

It rejected as "an incongruous procedure" Willmut's argument that the filing of new rates, which superseded earlier increases then under investigation, destroyed Commission jurisdiction to continue or dispose of its inquiry into the lawfulness of the earlier rates, because the filing of superseding rates converted those superseded into past rates, concerning which the Commission had no authority. For, it reasoned, if Willmut's position were true, a natural

gas company could insure its newly increased rates from further Commission scrutiny by the "simple expedient" of new filings. To avoid this, which the Court said Willmut "obviously * * * does not desire", Willmut contended that the Commission must dismiss pending proceedings involving lawfulness of previous increases for lack of jurisdiction to entertain them, but disallow such increases and order refund of all collections thereunder. Thus Willmut's suggestion was that jurisdiction to consider be denied but consideration exercised to reject and disallow such rates and to order refunds (an exercise of power on the merits.) The Court found nothing in the Act or decisions authorizing such Commission disclaimer of jurisdiction in a pending Section 4(e) hearing because another rate increase was filed during pendency. It declared itself unwilling to hold, "in the absence of controlling judicial precedent or express statutory provision requiring us to do so" that the Commission "must or may" summarily dismiss or disallow in such circumstances.

On the contrary, it declared its holding to be that Commission jurisdiction to investigate lawfulness of increased rates "is not lost merely because the natural gas company later files a still larger increase." It declared the Commission had authority to continue investigation of lawfulness of such previously filed rates "for the period from the date of filing until they were superseded by a later filing, as well as to order a refund of collections during that period which it thereafter determined to have been unlawful."

It held the Commission justified in permitting United to file and make effective the increases of February 11, 1960 (RP 60-2), even though that filing superseded earlier increased rates still under investigation.

The Court found without merit Willmut's second contention that the Commission abused its discretion in accepting the filing of increased rates in RP 60-2.

It said Willmut's contention was that the Commission erred in not exercising power contended existing under Section 16 which would "prevent Section 4 from being used as a vehicle for piling increase upon increase with such frequency and regularity as to foreclose any hope for fixing lawful rates for the present and future or for giving any rate stability." The Court reasoned that the broad power of Section 16 did not authorize an order or regulation which would nullify or restrict the right of the natural gas company to change rates subject only to the Section 4(d) requirement of notice to the Commission so that the Commission might proceed pursuant to Section 4(e). It said this Court in *Mobile* (1956) 350 U.S. 332, 343, declared that the rate-making and rate-changing power of the natural gas companies "remain undefined and unaffected by the Act." Willmut's suggestion, the Court declared, would authorize the Commission to reject a filing pursuant to the mandate of Section 4(d) and this clearly was "such an order or regulation [as] would amount to a legislative change, which is beyond the authority of the Commission."

It did not find persuasive or tenable the suggestion that United has used Section 4 "as a vehicle for piling increase upon increase"; rather it said the "vehicle" was United's "own inherent rate-making and rate-changing powers", which *Mobile* said were unaffected by the Act, and which were tantamount to the power "to establish, ex parte, and change at will, the rates offered to prospective customers." Since Section 4(d) does not forbid such successive filings but merely requires notice to the Commission so it may investigate lawfulness, Willmut's contention, if upheld, would require legislation to that effect, amendatory of the Act.

Willmut's third contention, not advanced here, that the filing was discriminatory upon its face was rejected out of hand "because the Commission was not authorized to reject

such filing on any ground appearing on its face." Again, it admonished that the Commission's "only statutory authority was to enter upon a hearing concerning the lawfulness of such rates, to suspend their effectiveness for a time, and *after full hearing* to make such orders with reference thereabout as would be proper in a proceeding under Section 5(a) of the Act."

COUNTER-QUESTION PRESENTED

Whenever a natural gas company files notice of increased rates pursuant to Section 4(d) of the Natural Gas Act which the Commission suspends subject to hearing and decision pursuant to the discretionary power of Section 4(e) and which thereafter become effective under said Section, is not the Commission, even though a subsequent filing or filings of increased rates be made prior to final disposition of the first filing and which subsequent filing or filings may be suspended and thereafter made effective, expressly required by Section 4(e) to complete and dispose of such statutory review and determination of the lawfulness of such first suspended rates?

ARGUMENT

The well reasoned opinion below clearly and definitively disposes of Willmut's contentions. Its analysis of the Act is convincing demonstration that the Act does not authorize the Commission to do and order that which Willmut sought. Indeed, that analysis makes clear that Willmut's petition would require the Commission to assume and exercise substantive power not granted but denied by the Act. As that Court points out, if the Commission is to have and exercise such power, "legislation to that effect must be adopted" by the Congress.

1. The Basic Act is the Sole Source of Commission Jurisdiction and Power.

The jurisdiction of the Commission is derived wholly from the Act. It has and may exercise only such jurisdiction or power as the act expressly sets forth and confers. Such power may not be augmented by implication, or by regulation, or by decision. It thus possesses no inherent powers by virtue of its existence. The Act does not bestow upon it any judicial or equitable powers to make decisions and orders which it, in its general judgment, may believe to be proper, just, or reasonable.

This Court, dealing with the problem of jurisdiction of administrative bodies in *Arrow-Hart & H. Elec. Co.* v. *Federal Trade Commission* (1934) 291 US 587, declared:

> "The Commission is an administrative body possessing only such powers as are granted by statute. It may make only such orders as the Act authorizes; may order a practice to be discontinued and shares held in violation of the Act to be disposed of; but, that accomplished, has not the additional powers of a court of equity to grant other and further relief by ordering property of a different sort to be conveyed or distributed, on the theory that this is necessary to render effective the prescribed statutory remedy" (p. 598-9).

See, also, *Stark* v. *Wickard* (1944) 321 U.S. 288, 309; *Federal Trade Commission* v. *Sinclair Refining Co.* (1923) 261 U.S. 463, 475-6; *Federal Communications Commission* v. *American Broadcasting Company* (1954) 347 U.S. 284, 290; *Waite* v. *Macy* (1918) 246 U.S. 606.

In *Montana-Dakota Utilities Co.* v. *Federal Power Commission* (1948, 8 Cir.) 169 F. 2d 392, 398, cert. den. 335 U.S. 853, this principle was declared applicable to the Federal Power Act, which, as this Court knows, is substantially like the Act. *Mississippi River Fuel Corp.* v. *Federal Power*

Commission (1953, 3 Cir.) 202 F. 2d 899, pet. for cert. dismissed 345 U.S. 899, applies this principle to the Act. There the Commission summarily rejected and dismissed a filing as being contrary to its Regulations. After pointing out that "The statute which defines the powers of the Commission in natural gas matters makes no provision for any such procedures" (p. 902), the Court re-affirmed the power of the Commission to adopt regulations to require schedules and supporting data to be organized "in convenient and readily comprehensible form". It, however, said:

> "This is not such a case. The Commission has simply refused to recognize as properly before it or retain for action as prescribed by the statute a filing which met all formal requirements. On the face of Section 4 of the Natural Gas Act, relevant portions of which have been set out above, it is clear that, Mississippi's proposed tariff changes having been duly filed, the Commission had only two alternatives. By failing to act it could have allowed them to become effective, or, it could have entered upon a hearing and, pending such hearing, could have suspended the proposed new schedules for a period not exceeding five months beyond the proposed effective date. It did neither of these things. It purported to follow a third course, rejection without hearing — *a course for which it cannot show even color of statutory authority.*" (p. 902).

Arguments were pressed for the need of additional power. to which that Court, with which the court below aligned itself, responded:

> "But the remedy lies with Congress. If changes in the law are needed, or more personnel to administer existing law, or both, it is not for the administrative agency or the courts to try to make up for this deficiency by taking unauthorized short cuts or indulging time saving procedures which fail to accord parties the rights which the law as written gives them. Viewed

> in most favorable light, that seems to us to be what the Commission has tried to do here. It follows that the order of May 29 must be set aside as wholly beyond the authority of the Commission." (p. 903).

If, as is clear, the Commission may exercise only such power as the Act expressly sets forth; it is clear that no act of a natural gas company can abrogate or terminate the jurisdiction conferred by the Act or deprive the Commission of the right or duty to exercise it. The Act nowhere purports to authorize the regulated company to take any action which would impair or restrict or change the power delegated by Congress to the Commission as its statutory agent, nor to deprive the Commission of any duty or power which Congress has directed the Commission to perform. Willmut's argument, then, that the procedures of the Act, which recognize the right of the natural gas company to file increased rates pursuant to Section 4, constitute a Congressional delegation of power that nullifies jurisdiction and the duty to exercise powers expressly laid on the Commission by the Act, is without force.

While the petition buffs and blurs it somewhat, the real thrust of Willmut's position continues, as below, that the Commission is a rate fixing and rate making body. This distorts and mistakes the provisions of the Act, as well as the holding of the Court in *Mobile (United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.* (1956) 350 U.S. 332) and *Memphis (United Gas Pipe Line Company* v. *Memphis Light, Gas and Water Division* (1959) 358 U.S. 103). The Act gives no power to the Commission to fix rates, but does give power to review both existing and newly changed rates. Only the natural gas company has power to fix initially or change rates. *Mobile, supra; Memphis, supra; Pennsylvania W. & P. Co.* v. *Consolidated G.E.L. & P. Co.* (1950, 4 Cir.) 184 F. 2d 552, cert. den. 340 U.S. 906; *Montana-Dakota Utilities Company* v. *Northwestern Public Service Co.*,

supra; Hope Natural Gas Co. v. *Federal Power Commission* (1943, 4 Cir.) 134 F. 2d 287, reversed on other grounds 320 U.S. 591; *Texas & Pacific Railway Co.* v. *Abilene Cotton Oil Co.* (1907) 204 U.S. 426; *United States* v. *Illinois Central Railroad Co.* (1924) 263 U.S. 515.

The rationale of the foregoing cases, culminating in *Memphis*, may be stated to be that when a given rate, because of business conditions, becomes unfair, unjust and unreasonable, the regulated company has the power to demand fair, just, and reasonable rates. The statutory prescription of "reasonableness" is the standard, and the decision of the regulated company is always subject to the Commission's review statutorily provided. This free right of the regulated company to fix and establish rates exists, as *Mobile* puts it, as it would in the absence of the Act. Its power in that respect is limited only where in the absence of the Act it would lack the power, as for instance in *Mobile* where United was held to have "contracted away" such power.

Thus the power of the regulated company initially to fix or change rates is unaffected by the Act and is co-extensive with the powers thereabout possessed in the absence of the Act.

The Commission's power of review exists equally under Sections 4 and 5. If the Commission finds an existing or newly changed rate to be too high, it is empowered to direct reduction to the level it finds to be the just and reasonable level. If the filed rate be below the just and reasonable level, it is equally empowered to authorize or direct the natural gas company to file increased rates. This power by express direction of the Act is applicable prospectively, but this is the exercise of the function of review, not rate fixing, as Willmut would have it. *Mobile* sums it up as Willmut concedes (Pet. 13):

> "The powers of the Commission are defined by §§4 (e) and 5(a). The basic power of the Commission is

that given it by §5(a) to set aside and modify any rate or contract which it determines, after hearing, to be 'unjust, unreasonable, unduly discriminatory or preferential.' This is neither a 'rate-making' nor a 'rate-changing' procedure. It is simply the power to review rates and contracts made in the first instance by natural gas companies, and, if they are determined to be unlawful, to remedy them." (p. 341)

It is thus clear that every filing of increased rates by the natural gas company calls into existence the power of the Commission to review. Upon such a filing, either initially or by change of increased rates, the Commission, as the Court below and the Third Circuit in *Mississippi River, supra,* agree, is presented with two alternatives, i. e., it can fail to act and permit initial or increased rates to become effective; it can suspend and review. It is thus clear that such filings cannot subvert or destroy or deprive the Commission of the exercise of its statutory powers.

2. The Express Provisions of Section 4(e) Determine the Question Posed Here.

If the Commission adopts the second alternative of Section 4(e) and suspends pending review, the same Section obliges the Commission to exercise such review power and determine lawfulnss. A lawful rate, as Section 4(a) provides, is a just and reasonable rate, the identification of which is the goal of Commission review. It is clear, then, that the public interest, and the basic rights and protection of the natural gas company, as well as its customers, require that lawfulness be settled.

Mobile expressly recognizes this, for in speaking of the powers defined by Section 4(e) and 5(a) the Court, addressing itself to Section 4(e), says:

"Section 5(a) would of its own force apply to *all* the rates of a natural gas company, whether long-

> established or newly changed, but in the latter case the power is further implemented by §4(e). All that §4(e) does, however, is to add to this basic power, in the case of a newly changed rate or contract (except 'industrial' rates) the further powers (1) to preserve the status quo pending review of the new rate by suspending its operation for a limited period, and (2) thereafter to make its order retroactive, by means of the refund procedure, to the date the change became effective. The scope and purpose of the Commission's review remain the same — to determine whether the rate fixed by the natural gas company is lawful" (p. 341). (Emphasis by Court.)

This "change" *Mobile* declares, "is *completed* upon compliance with the notice requirement [of section 4(d)] and *the new rate has the same force as any other rate* — it can be set aside *only* upon being found unlawful by the Commission" (p. 342, emphasis added). The Courts have declared that increased rates may not be dismissed without a hearing. *Federal Power Commission* v. *Nat. Gas. Pipeline Co.* (1942) 315 U.S. 575, 583; *Atcheson, Topeka & Santa Fe Railway Co.* v. *United States* (1932) 284 U.S. 248, 262; *Ohio Bell Telephone Company* v. *Public Utilities Commission* (1937) 301 U.S. 292; *Morgan* v. *United States* (1936) 298 U.S. 468. The regulations Willmut relies on (Pet. 16) have no purpose or design to adjudicate what is a change or how a change is made effective — for *Mobile* teaches that the Commission has no such power. They are in character and purpose, procedural. Such regulations are intended to assist the Commission's review as well as to furnish information and data useful in such review which the filing permits if the Commission concludes review is indicated.

Section 154.63 of the Commission's Regulations titled "Material submitted with changes in a tariff, executed service agreement or part thereof" specifies an exhaustive listing of data and material which must accompany such a

filing. This material is of the fullest and most substantial character. The required material is so detailed and definitive as to furnish the Commission with sufficient information to determine lawfulness upon the face of the filing. Thus the Commission has access at the filing to information upon which to base a determination. Equally, it may require a hearing and full evidence. Or it may avail itself of its expertise and the services of its technical staff to make an investigation from the books and records of the natural gas company and from any other source. To make a determination it may combine any of these methods; or it may dispose of the matter by settlement. In any event, where suspension is had pending review, lawfulness during the period of applicability must be determined. Such review must be completed and effectively disposed of.

Section 4(e) gives the Commission discretionary power to suspend but not to exceed five months beyond the date on which the increased rates would normally become effective. It then provides:

> "If the proceeding has not been concluded and an order made at the expiration of the suspension period, on motion of the natural gas Company making the filing the proposed change of rate * * * shall go into effect."

The section then gives discretionary power to the Commission to require a bond or undertaking for refund "and, upon completion of the hearing and decision, to order such natural-gas company to refund, with interest, the portion of such increased rates or charges by its decision found not justified." The Commission is expressly empowered "after full hearing, either completed before or after the rate * * * goes into effect [to] make such orders with reference thereto as would be proper in a proceeding initiated after it had become effective." Thus the express language

of Section 4(e) denies and belies Willmut's contentions. Nothing in that language suggests or gives warrant to the claim that a hearing must be completed within six months; or that Commission jurisdiction is ousted, destroyed, or lost either by failure to complete a hearing within six months or to complete and dispose of the hearing prior to the time another filing, pursuant to Section 4(d), may be made.

In the Commission and the court below, Willmut claimed that its increase in cost from United's increases in rates over the past seven years was approximately 84%; but was silent in the increase in that period of the prices United must pay to purchase the gas which guarantees its continued service.[4] Neither dollars nor percent affect the answer, for the Act obligates the Commission in its review to determine propriety of the expenses. If justified, rates must be approved to recoup them; if unjustified, lawful level of rates must be set and refunds ordered as provided by Section 4(e).

Pipeline companies cannot be compelled to incur expenses not returned. Any effort to do so, such as Willmut proposes, would render the Act unconstitutional, for thereby United would be deprived of its property without due process and without constitutional compensation.

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[4] United has attached App. B. (the only difference from a similar one attached as Ex. B below, being the actual figures for actual periods of RP 60-2, since become available) showing in columnar form for each docket number the applicable period for each series of rates; the increased revenues subject to Commission jurisdiction at rates in the filing over former approved rates; together with the increased gas cost budgeted in each docket and its related percent of such amount to increased revenues, and finally the amounts actually paid for gas in each period. This compares the budgeted cost with actual experience. It discloses the steady increase in purchased gas cost which principally caused the filings. The struggle for gas supply becomes sharper day by day as the demand for natural gas, and the number of users, increases. This, in addition to the fact that costs of labor and and supplies steadily mount: emphasize the wisdom of this Court's admonition in *Memphis* that business reality demands that natural gas companies should not be precluded by law from maintaining economic balance of intake and outgo through increased prices.

Willmut's position, if sustained, would destroy possibility of continued economic health and life of the pipelines, and thus would defeat its own purposes. Achievement of balance between pipelines and customers which follows determination of allowable costs subject to recoupment from customers is the legitimate and lawful duty contemplated by the filing and review which Section 4 permits. The performance of a lawful act, whether a filing by a natural gas company or completion of the hearing as authorized, neither renders unlawful a former lawful act nor destroys or emasculates Commission jurisdiction or its duty to discharge the function which Congress delegated to it.

Section 4(e) alone is ample authority requiring Willmut's acceptance and affirmance of the Commission's order.

Willmut's confusion is increased by its notion that a subsequent filing turns a prior filing into a "past period" outside the ambit of Commission power.

Section 4(e) expressly authorizes the Commission's order to be retroactive to the effective date of such rates, and we have demonstrated that this is not destroyed by a subsequent filing. Its exercise cannot be outside the ambit of the Act, for its power is explicitly declared.

The power and jurisdiction conferred by Section 4(e) is continuously available even though it may be spent in a given case by its exercise to completion. Being continuously available, it may be employed over and over in recurring similar situations. The Act nowhere declares that the Commission shall lose power to complete a review proceeding merely because it shall not have completed such review before another filing be made.

Equally, there is nothing in the Act which prohibits an additional filing pursuant to Section 4(d) when a Section 4(e) review pends uncompleted before the Commission. If, as Willmut contends, such a filing obliterates Commission

power to complete statutory review, then the natural gas company would be deprived of its right to protect itself against rising costs. This, in turn, would reduce, if not destroy, the ability to render service to the consumers. This would be contrary to the protection of its "legitimate interest" which *Memphis* said was the concern both of the Commission and the consumers. (358 U. S. at p. 113-4, No. 3)

In fact, Willmut's claim of loss of jurisdiction is nonsensical. The court below termed it "incongruous". On the one hand it contends a filing destroys and ousts jurisdiction; on the other, it contends that jurisdiction continues and must be exercised, even to determine on the merits and order that the filing was not justified and directing a refund. Willmut's contention carried to logical conclusion would mean that the loss of jurisdiction would deprive the Commission of the right to review, and thus the rate having been made fully effective in accordance with the terms of the Act, would remain the legal rate, and that would end the matter.

The effect of successive filings, including most of the docket numbers in the caption of Willmut's petition to reject, were specifically called to the attention of this Court in the *amicus* brief which Willmut filed in *Memphis* under the borrowed name of City of Hattiesburg, Mississippi (p. 3, 40 Amicus Brief in Nos. 23, 25 and 26, October Term, 1958, in *Federal Power Commission* v. *Memphis Light, Gas and Water Division.*) This Court was not persuaded.

Willmut raises again its complaint on the industrial resale situation. In United's reply brief in *Memphis* (pp. 18-19), it disclosed that Willmut in its industrial resale rate schedule contracts expressly reserved the right to pass all such increases along. The Court put this in proper perspective in footnote 10 (358 U.S. 115).

Willmut complains of delay in the Commission in disposition of review proceedings. United is neither responsible for, nor in a position to control or prevent what Willmut calls "delay". Willmut, however, is in a position to protect itself wholly, as it has already done with respect to industrial resale rates, or to make proper and diligent application to the proper local authority for protection against rising costs. The fundamental law requires that lawful rates be permitted, else confiscation would result, and thus Willmut is adequately equipped to protect its right to recoup its cost of service to its own customers.

Finally, Willmut argues that the purpose of the Act is to protect consumers against exorbitant rates for gas, and that filings under Section 4(d) can, in its opinion, produce exorbitant rates because of Commission inability to hear and determine within the time Willmut believes proper. The Supreme Court in *Memphis* adequately thus answered this position:

> "United, like the seller of an unregulated commodity, has the right in the first instance to change its rates as it will, unless it has undertaken by contract not to do so. The Act comes into play as to rate changes only in (1) imposing upon the seller the procedural requirement of filing timely notice of change, (2) giving the Commission authority to review such changes, and (3) authorizing the Commission, in the case of rates for sales of gas for other than exclusively industrial use, to suspend the new rates for a five-month period and thereafter to require the posting of a refund bond pending a determination of the lawfulness of the rates as changed. (see §4(d), (e), at note 3, supra).
>
> "It seems plain that Congress, in so drafting the statute, was not only expressing its conviction that the public interest requires the protection of consumers from excessive prices for natural gas, *but was also manifesting its concern for the legitimate interest of*

natural gas companies in whose financial stability the gas-consuming public has a vital stake. Business reality demands that natural gas companies should not be precluded by law from increasing the prices of their product whenever that is the economically necessary means of keeping the intake and outgo of their revenues in proper balance; otherwise procurement of the vast sums necessary for the maintenance and expansion of their systems through equity and debt financing would become most difficult, if not impossible. This concern was surely a proper one for Congress to take into account in framing its regulatory scheme for the natural gas industry, cf. Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591, 603, and we think that it did so not only by preserving the 'integrity' of private contractual arrangements for the supply of natural gas, 350 U.S. at 344 (subject, of course, to any overriding authority of the Commission) but also by providing in § 4 for the earliest effectuation of contractually authorized or otherwise permissible rate changes consistent with appropriate Commission review." (pp. 113-114)

3. The Commission's Construction of Section 4(e) Accords with United's Construction.

The Commission over the years has consistently construed Section 4(e) to authorize and empower it to dispose of the review of suspended rates even though subsequent filings have been made and become effective. Such long-continued administrative interpretation, while not controlling on the Courts, is persuasive and entitled to great weight. *Panhandle Eastern Pipe Line Company* v. *Federal Power Commission* (1956, 3 Cir.) 232 F. 2d 467, 471; *Sunray Mid-Continent Oil Co.* v. *Federal Power Commission* (1960) 364 U.S. 137, 154; *Federal Trade Commission* v. *Mandel Bros., Inc.* (1959) 359 U.S. 385, 391, and cases cited; *Coombe* v. *U.S.* (1925) 3 F. 2d 714, 716; *Hecht Co.* v. *McLaughlin* (1954) 214 F. 2d 212, 214-5.

Appendix A lists 70 proceedings over a ten year period where prior suspended filings made effective under Section 4(e) were followed by subsequent filings which were suspended and thereafter made effective under Section 4(e), and in which the Commission exercised its power of review to determine lawfulness of prior filings during their period of applicability. These 70 instances seem comparable to the experiences *Panhandle* notes.

Such proceedings have been disposed of in harmony with the various methods available to the Commission (See p. 14-15 infra.) Appendix A shows also those instances where there has been judicial review. None of them disclose an objection by a party to Commission jurisdiction on grounds which Willmut advances. Though the statutory review is limited to keeping the Commission within the bounds which Congress has created (*Colorado Interstate Gas Co.* v. *Federal Power Commission* (1945) 324 U. S. 581; *Hope Natural Gas Company* v. *Federal Power Commission* (1943, 4 Cir.) 134 F. 2d 287, reversed on other grounds, 320 U.S. 591; *Prentis* v. *Atlantic Coast Line Co.* (1908) 211 U. S. 210; *B. & O. Railway Co.* v. *United States* (1924) 264 U. S. 258; *Home Telephone & Telegraph Co.* v. *Los Angeles* (1908) 211 U.S. 265; *Mississippi Power & Light Co.* v. *Memphis Natural Gas Co.* (1947, 5 Cir.) 162 F. 2d 388, cert. den. 332 U.S. 770), no Court on its own motion dismissed the judicial review on the ground that the Commission lacked jurisdiction to determine lawfulness.

All of such cases recognize and proceed upon the existence of Commission jurisdiction. Indeed, one, *Michigan-Wisconsin Pipe Line Co.* v. *Federal Power Commission* (1959, 6 Cir.) 263 F. 2d 553, compares and contrasts the function of Commission review as to what it terms the "impoundment period", otherwise generally known as the "closed-in" period, and the "locked in rate", being the rate during the applicable period before superseding rates are

made effective, from that purpose and function when the Commission reviews rates for future applicability, which the opinion calls the review for the "indefinite future". The Sixth Circuit reviewed a Commission order on lawfulness of rates which had been suspended under Section 4(e) but which had thereafter by a subsequent filing been superseded. It found no want of power, and determined the case upon the merits of the order.

United thus respectfully submits that the administrative interpretation which has continued over the years and which has been approved by the cases listed in Appendix A authoritatively interpret Section 4(e) contrary to the claims and contentions advanced by Willmut herein.

4. The Decision Below Does not Conflict with Amerada.

Willmut's claim that the decision below conflicts with that of the Tenth Circuit in *Amerada Petroleum Corp.* v. *Federal Power Commission* (Pet. App. B) is without substance. The all important distinction it confesses (Pet. p. 7) it ignores.

The further claim that there is "sharp conflict between the two courts" on the proper interpretation of *Mobile* and *Memphis* and the "nature and reach" of Commission authority under Section 16 of the Act, (Pet. p. 6) is surprising. For a reading of the two decisions discloses no conflict, but harmony between the two courts.

Amerada, pursuant to Section 4(d), filed increased rates which the Commission suspended pursuant to Section 4(e). During the suspension period *and before the suspended rates were made effective*, Amerada filed new increased rates (App. B, p. 12a). Pursuant to its policy interpretation for producers, the Commission refused permission to file during the suspension period.

Unlike *Amerada*, every one of United's filings were made *after* earlier suspended rates had become *effective* by the Section 4(e) motion at the termination of the suspension period.

Amerada thus declared the issue:

> "Pinpointing, the substance of the challenge is that the Act contains no restriction upon making rate changes during periods when prior rate changes relating to the same gas are suspended." (App. B, p. 13a)

It rejected this challenge, holding:

> "Section 4(d) of the Act concerns itself with the making of changes in rates. It forbids the making of changes without notice thereof being given to the Commission for at least thirty days before such changed rates are to go into effect. And it provides that the notice shall state the change or changes to be made in the schedule or schedules *'then in force'* and the terms at which the changed rates shall go into effect. Considered as a whole, the section bears a clear token of Congressional implication that the *power of a natural gas company to make a change or changes in rates is limited to the rate or rates in force and effect at the time of the change or changes.*" (App. B, p. 14a)

The Court below was not confronted with the issue of *Amerada*. Naturally, it made no holding in conflict. The filings which the court below considered were made strictly in accordance with *Amerada's* analysis of Section 4(d), as well as the Commission policy which *Amerada* recognized (18 C.F. R. §2.4 (f) and 2.52, page 37 (App. B, p. 14a))

Nothing in the decision below, as Willmut suggests, approves, contrary to *Memphis*, any action by United outside "the procedures and limitations of the Act"; on the contrary the court held that United's filings were properly

handled by the Commission whose order it held entitled to affirmance, because made in accordance with the "procedures and limitations of the Act."

In our submission the assertion of "sharp conflict" between the two courts on the interpretation of *Mobile* and *Memphis* is frivolous.

Equally without merit is the curious position on Section 16. *Amerada* noted that Section 16 gave power to prescribe orders and regulations "necessary or appropriate to carry out the provisions" of the Act. It held that those there involved were procedural regulations in conformity with Section 16. It did not hold that Section 16 authorized regulations creating by amendment new power not granted by the Act. Willmut's contentions on Section 16, said the court below, would make necessary such an amendment, if adopted and enforced. That is not conflict between the two courts on Section 16; that is consonance.

The claim of conflict will not stand examination — it is shown to be non-existent.

5. Willmut's Contentions are Concluded by the Commission's Order of April 29, 1959 at Docket G-18406.

In Docket G-18406 Willmut filed a petition (R. 3706) to reject, in terms practically identical with those contained in the petition filed at Docket RP 60-2, and involved in this appeal. United's answer (R. 3728) was substantially similar to that filed in Docket RP 60-2, (R. 4615). This petition was rejected (R. 3725) by order issued April 29, 1959. Willmut attempted to petition for rehearing (R. 3877) which the Commission rejected (R. 3913) because not filed within thirty days after the issuance of the order as required by Section 19(a) of the Act. No appeal was attempted, and the Commission order became final. The order of April 29, 1959 at Docket G-18406 is res judicata

of the present petition and issues before this Court. See *Brownell* v. *Chase Nat. Bank* (1956) 352 U.S. 35; *Angel* v. *Bullington* (1947) 330 U.S. 183; *United States* v. *Munsingwear* (1950) 340 U.S. 36; *Woods* v. *Cannaday* (1946) 81 App. D. C. 281, 158 F. 2d 184; *United States* v. *New York Terminal Warehouse Co.* (5 Cir. 1956) 233 F. 2d 238; *United States* v. *I.C.C.* (1925) 56 App. D.C. 44, 8 F. 2d 905; *Wheat* v. *Texas Land & Mtg. Co.* (5 Cir. 1945) 153 F. 2d 926, cert. den. 328 U.S. 837; *Crowell* v. *Baker Oil Tools, Inc.* (5 Cir. 1947) 164 F. 2d 487, cert, den. 333 U.S. 880.

This principle is applicable to administrative orders. *Sunshine Anthracite Coal Co.* v. *Adkins* (1940) 310 U. S. 381; *Butte A. & P. R. Co.* v. *U. S.* (1933) 290 U. S. 127; *Hagens* v. *United Fruit Co.* (1943, 2 Cir.) 135 F. 2d 842; *Pillsbury* v. *Alaska Packers' Assn.* (1936, 9 Cir.) 85 F. 2d 758. Cf. Willmut's cases, *Panhandle Eastern Pipe Line* v. *Federal Power Commission* (1956, 3 Cir.) 236 F. 2d 606, and *State Corp. Commission of Kansas* v. *Federal Power Commission* (1953, 8 Cir.) 206 F. 2d 690.

6. Willmut's Other Cases.

Willmut cites no cases that deal with the question of whether the Commission can or should reject a filing made pursuant to Section 4(d) upon the ground that there pends undisposed of a prior suspended but effective filing subject to review under Section 4(e). *State Corporation Commission of Kansas* v. *Federal Power Commission* (1953, 8 Cir.) 206 F. 2d 690 (Pet. 17) alone involved consideration of a Commission order dealing with multiple filings but that case does not assist Willmut. That case involved no rejection of filing; it was a denial on the merits after a hearing. The first proceeding was fully heard and adjudicated. The second proceeding as to certain items was, on motion, dismissed at the conclusion of Northern Natural's case in chief

because those specific items were expressly included in and ruled by the first proceeding. The Court entertained jurisdiction of appeals from both proceedings.

Panhandle Eastern Pipe Line Co. v. *Federal Power Commission* (1956, 3 Cir.) 236 F. 2d 606 (Pet. 17) likewise is inapropos. The Commission did not "summarily" disallow or dismiss, as Willmut states; it held a full hearing. Panhandle claimed that new and changed conditions warranted a different result from that ordered in a previous case. The Court affirmed the Commission's holding that there were no changed or new conditions.

Mobile lends no assistance to Willmut. Willmut lost its effort to take advantage of *Mobile*. See *Willmut Gas and Oil Co.* v. *Federal Power Commission* (1959), 102 App. D. C. 140, 275 F. 2d 877. We have demonstrated infra that *Mobile's* holdings are contrary to Willmut's claims.

Hope Natural Gas v. *Federal Power Commission* (1952, 4 Cir.) 196 F. 2d 803, does not involve either factually or legally the situation or issues here involved. That case was concerned with Hope's efforts to have increased rates made effective prior to expiration of the suspension period. This led to Judge Parker's exposition of the history and underlying reasons for the doctrine of suspension in regulatory statutes — a matter that does not concern this case.

Hope Natural Gas Co. v. *Federal Power Commission* (1943, 4 Cir.) 134 F. 2d 287, Reversed 320 U.S. 591, is a run of the mill review of a Section 5(a) decision rendered after a full and exhaustive hearing. It is notable chiefly because it marks judicial approval of the Commission's method of "original cost" regulation, or the "prudent investment theory". It does note that Section 4 contains the machinery for obtaining rate adjustments. In our submission it furnishes no support for Willmut's claims. Even so, the Court recognized the economic facts of pipeline life, which Section 4 accommodates, when it said:

"With changes in economic conditions rates must be changed from time to time, * * *" (p. 808)

Certainly, *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.* (1951) 341 U.S. 246, is of no assistance to Willmut. The District Court rendered a dollar judgment on the plaintiff's claim that because of corporate control it had been compelled to file rate schedules with the Commission that were fraudulent and unlawful. The Court undertook to determine a lawful rate to measure the judgment. The Court of Appeals reversed, holding the trial court was without jurisdiction. The Supreme Court said neither the District Court nor the Commission had power to determine that filed rates in a past period were unjust and unreasonable for such purposes. The rates there were not suspended rates as here. United agrees thoroughly with *Montana-Dakota*, but respectfully submits it throws no light whatever to assist Willmut's contentions here.

Federal Power Commission v. *Nat. Gas Pipe Line Co.* (1942) 315 U.S. 575, lends no assistance. Neither this case nor the reference to page 584 of the opinion (Pet. 18) deal with "filings" or rejection of filings on any ground. The case was concerned with the power of the Commission to issue an interim rate order in a Section 5(a) hearing. Page 584 (to which Pet. 18 refers) speaks only of a hearing in which the natural gas company was permitted to introduce its whole case.

Even if *Episcopal Theological Seminary* v. *F. P. C.* (D. C. Cir.) 269 F. 2d 228, cert. den. sub. nom *Pan American Petroleum Corp.* v. *FPC*, 361 U.S. 895, holds, as Willmut states, (Pet. p. 22)—it does not assist Willmut. Failure of a proponent to carry its burden of proof of lawfulness (see Section 4(e) which expressly lays this burden on the proponent) means the Commission found unlawfulness. The refund, in such circumstances, is merely the execution of

the express direction and power given the Commission for refund by Section 4(e). Mr. Justice Reed in *Episcopal* (p. 233) does not ignore the "then in force" language of Section 4(d).

CONCLUSION

By the foregoing it appears, as the Court below declared, that the Commission has acted properly and in accordance with the powers granted it by the Act. In our submission no special or important reasons appear calling for the Court's review; and the claim of conflict is not only not supported, but shown not to exist.

The decision of the Court below was correct; whereby the Petition for Certiorari should be in all things denied, and it is respectfully so prayed.

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APPENDIX A AND B

APPENDIX A

List of Natural Gas Pipeline Company rate increases involving "locked-in" or "closed-in" periods which have been decided by an Examiner or the Commission, or settled with Commission approval, during the period January 1, 1950 to December 20, 1960.

Pipeline	Docket No.	Date Filed	End of Suspension Period	Approx. Annual Increase	Date Decided or Settled	Decision of Examiner or F.P.C.	Judicial Review
ATLANTIC SEABOARD CORP.							
	G- 1384	4-10-50		$ 400,000	11- 7-51	11 FPC 486, Examiner's Decision	Atlantic Seaboard Corp. v. Federal Power Com. (1952, 4 Cir.) 200 F. 2d 108, rehearing den. 799
					4-25-52	11 FPC 45, Op. 225	
	1806	9- 7-51	3- 7-52	3,000,000	2-26-54		
	2054	8-15-52	2-15-53	4,300,000			
	2452	5-13-54	11- 1-54	5,700,000	1-11-57	17 FPC 15	
	5477	11- 9-54	12-15-54	755,000			
COLORADO INTERSTATE GAS CO.							
	G- 2260	9- 2-53	3- 3-54	9,600,000	12-30-58	20 FPC 874	
	2576	6-30-54	2- 1-55	10,269,000			
	11717	12-17-56	7- 1-57	3,137,000			
EAST TENNESSEE NATURAL GAS CO.							
	G-12264	2-20-57	7-14-57	578,000	12-16-60	Settlement Order of F.P.C.	
	17330	11-28-58	5-15-59	615,000			
	20072	10- 8-59	4- 5-60	895,000			
EL PASO NATURAL GAS CO.							
	G- 1380	3-16-50	10- 1-50	2,500,000	11- 1-51	10 FPC 1484	
	1696	4-30-51	11- 1-51	7,200,000			
	2018	7- 1-52	1- 1-53	15,300,000	11-26-54	Op. 278	
					7-20-56	16 FPC 764 (Settlement order)	
HOME GAS CO.							
	G- 1966	5- 1-52	11- 1-52	1,460,000	7- 2-54	Op. 272	
	2175	4-24-53	10-25-53	287,000	12- 3-54	Op. 272-A	
	12198	2-13-57	7-14-57	673,000	6-22-60	23 FPC 836	
	16819	10- 9-58	4- 9-59	752,000			
	18424	4-10-59	5-15-59	131,000			
	19251	6-24-59	12- 1-59	143,000			
HOPE NATURAL GAS CO.							
	G- 2051	8-15-52	2-15-53	1,900,000	11- 6-53	12 FPC 342 (Op. 262)	
	2165	4- 1-53	10- 2-53	3,200,000			
	2303	10- 9-53	4- 9-54	3,300,000	11-19-54	Examiner's decision	
					1-17-55	14 FPC 510	

Pipeline	Docket No.	Date Filed	End of Suspension Period	Approx. Annual Increase	Date Decided or Settled	Decision of Examiner or F.P.C.	Judicial Review
KENTUCKY GAS TRANSMISSION CORP. (Formerly Central Kentucky Natural Gas)							
	G- 1791	8-17-51	2- 7-52	$2,000,000	3-24-54		
	2056	8-15-52	2-15-53	1,100,000			
	2450	5-14-54	11- 1-54	1,700,000	3-11-57	17 FPC 396	
	5476	11- 4-54	12-15-54	461,000			
	12199	2-13-57	7-14-57	2,300,000	8-11-60	Settlement or order of FPC	
	16816	10- 7-58	4- 7-59	1,721,000			
	18421	4-10-59	5-15-59	878,000			
LAKE SHORE GAS CO.							
	G- 5473	11- 9-54	12-15-54	46,000	3- 7-58	FPC order	
	11983	1-14-57	7-14-54	193,000	6- 2-58	19 FPC 872	
MANUFACTURERS LIGHT & HEAT CO.							
	G- 1967	5- 1-52	11- 1-52	2,169,000	7- 2-54	Op. 272	
	2176	4-24-53	10-25-53	1,343,000	12- 3-54	Op. 272-A	
	12197	2-13-57	7-14-57	1,789,000	2-25-60	23 FPC 446	
	16820	10- 9-58	4- 9-59	1,336,000			
	18425	4-10-59	5-15-59	458,000			
	19250	6-24-59	12- 1-59	605,000			
MICHIGAN WISCONSIN PIPE LINE CO.							
	G- 1678	3-30-51	10- 1-51	3,800,000	7-28-54	Op. 275	
					11-29-54	Op. 275-A	
	1996	6-11-52	12-12-52	3,900,000	3-20-57	18 FPC 412, Examiner's decision	Michigan Wisconsin Pipe Line Co. v. Federal Power Com. (1959, 6 Cir.) 263 F. 2d 553
	8511	1-25-55	4- 1-55	1,526,000	10-15-57	18 FPC 407, Commission's order	
	10524	5-15-56	11-15-56	4,075,000	3-17-58	Examiner's decision	
					12- 1-58	Examiner's supplemental decision	
					3- 6-59	21 FPC 306	
NATURAL GAS PIPELINE CO. OF AMERICA							
	G- 1697	4-17-51	12- 1-51	$ 2,400,000	8-13-53	12 FPC 708, Examiner's decision	
	2083	10- 1-52	4- 1-53	3,500,000	12-14-53	12 FPC 729, Commission's order	
	2302	10-13-53	1- 1-54	7,200,000	1-27-55	14 FPC 212, Examiner's decision	
					4- 1-55	14 FPC 221, Commission's order	
	3123	9- 1-54	3- 2-55	10,702,000	5-24-57	Examiner's decision	
	12157	2- 8-57	8-11-57	5,366,000	6-20-58	19 FPC 1002, Settlement order	
	13950	11-21-57	5-22-58	6,438,000	7-20-59	22 FPC 108	
	16026	7-25-58	12-15-58	4,987,000	12-19-60	Settlement order of FPC	
(Formerly Texas Illinois)	13951	11-21-57	5-22-58	2,723,000	12-19-60	Settlement order of FPC	

Pipeline	Docket No.	Date Filed	End of Suspension Period	Approx. Annual Increase	Date Decided or Settled	Decision of Examiner or F.P.C.	Judicial Review
NEW YORK STATE NATURAL GAS CORP.							
	G- 2119	1-15-53	7-15-53	3,700,000	5-19-54	Settlement order of FPC	
	2315	10-21-53	4-21-54	5,440,000			
NORTHERN NATURAL GAS CO.							
	G- 1382	3-27-50	9-27-50	4,100,000	6-11-52	11 FPC 123 (Op. 228)	State Corp. Com. of Kan. v. Federal Power Com.
					9-26-52	11 FPC 375 (Op. 228-A)	
	1533	10-27-50	4-27-51	5,200,000	11-16-54	Settlement	Northern Natural Gas Co. v. Federal Power Com. (1953, 8 Cir.) 206 F. 2d 690, cert. den., 346 U.S. 922
	1881	12-27-51	6-27-52	10,600,000	7-30-52	11 FPC 278 (C-1 233)	
					11-16-54	Settlement order	
OHIO FUEL GAS CO.							
	G- 1786	8-10-51	2-11-52	1,800,000	7-26-54	Op. 273	
					9-27-54	Order reopening	
	1965	5- 1-52	12- 1-52	2,200,000	12-22-54	Settlement order	
TENNESSEE GAS TRANSMISSION CO.							
	G- 5259	11- 3-54	12-15-54	8,616,000	4-12-57	18 FPC 439, Examiner's decision	
					10-17-57	18 FPC 428, Commission order	
TENNESSEE NATURAL GAS LINES, INC.							
	G- 5472	11- 8-54	7- 1-55	184,000	8- 6-58	20 FPC 132	
	17217	11- 4-58	5-15-59	363,000	6-23-60	23 FPC 848	
	19985	10- 5-59	4- 5-60	866,000			
TEXAS GAS TRANSMISSION CORP.							
	G-10751	6-15-56	1- 1-57	8,161,000	4-22-59	21 FPC 535	
UNITED FUEL GAS CO.							
	G- 1781	8- 6-51	2- 6-52	7,200,000	8- 7-53	12 FPC 251 (Op. 258)	
					11-19-53	12 FPC 351 (Op. 258-A)	
	2055	8-15-52	2-15-53	6,970,000	2- 5-54	Settlement order	
	2451	5-12-54	11- 1-54	13,600,000	10-19-56	16 FPC 1069 (Limited settlement)	
	5475	11- 4-54	12-15-54	2,700,000		Certain issues reserved for furthering hearing	
	12195	2-13-57	7-14-57	10,966,000	9-15-60	Order	
	16316	8-22-58	9-23-58	1,297,000			
	16815	10- 7-58	4- 7-59	6,629,000			
	18420	4-10-59	5-15-59	4,485,000			

APPENDIX B

United Gas Pipe Line Company

Increases in Revenues from Sales of Gas and Tariff Transportation Subject to the Jurisdiction of the Federal Power Commission at Rates in Filings Over Approved Rates Compared with Amount of Increased Gas Cost Included in Filings and with Increased Gas Costs Actually Experienced During Closed Periods April 1, 1956 through June 14, 1961.

	FPC Docket No. G-9547	FPC Docket No. G-10592	FPC Docket No. G-12801	FPC Docket No. G-15360	FPC Docket No. G-18406	Sub-Total (5 Closed Periods)	FPC Docket No. RP 60-2	Total
Closed Period:								
From	4- 1-56	11-16-56	12- 1-57	12- 1-58	10- 1-59	4- 1-56	8-13-60	4- 1-56
To	11-15-56	11-30-57	11-30-58	9-30-59	8-12-60	8-12-60	6-14-61	6-14-61
Duration of Period—Months	$7\frac{1}{2}$	$12\frac{1}{2}$	12	10	$10^{12}/_{31}$	$52^{12}/_{31}$	306 (days)	$62^{11}/_{30}$
Increases in Revenues Subject to the Jurisdiction of the FPC at Rates in Filings over Approved Rates	$6,782,539	17,182,698	21,764,125	24,142,290	32,904,966	102,776,618	41,589,961	144,366,579
Increased Gas Cost Included in Filings:								
Amount	$3,745,777	12,552,036	17,162,059	19,185,662	26,047,674	78,693,208	34,260,054	112,953,262
% of Increases in Revenues	55.23	73.05	78.85	79.47	79.16	76.57	82.38	78.24
Increased Gas Cost Actually Experienced during Closed Period:								
Amount	$6,303,611	13,776,194	21,414,619	22,746,510	32,751,997	96,992,931	35,856,591	132,849,522
% of Increases in Revenues	92.94	80.17	98.39	94.22	99.54	94.37	86.21	92.02